

AMENDED IN SENATE AUGUST 31, 2001

AMENDED IN SENATE AUGUST 20, 2001

AMENDED IN SENATE JULY 9, 2001

AMENDED IN SENATE JUNE 27, 2001

AMENDED IN SENATE JUNE 25, 2001

AMENDED IN ASSEMBLY JUNE 4, 2001

AMENDED IN ASSEMBLY MAY 24, 2001

AMENDED IN ASSEMBLY MAY 15, 2001

AMENDED IN ASSEMBLY APRIL 30, 2001

AMENDED IN ASSEMBLY APRIL 23, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## ASSEMBLY BILL

**No. 1600**

**Introduced by Assembly Member Keeley  
(Coauthor: Assembly Member Richman)**

February 23, 2001

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An act to ~~amend Section 1394 of~~ *add Section 1394.4 to* the Health and Safety Code, relating to health care service plans.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1600, as amended, Keeley. Health care service plans.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation and licensure of health care service plans by

the Department of Managed Health Care and makes a willful violation of the act's provisions a crime. Existing law provides that the civil, criminal, and administrative remedies available to the Director of the Department of Managed Health Care are not exclusive, and may be sought and employed in any combination deemed advisable by the director to enforce these provisions.

This bill would allow any interested person to obtain equitable relief in any court of competent jurisdiction from any person or entity licensed under these provisions with respect to violations or threatened violations of these provisions, with certain exceptions. ~~The bill would provide for the court to invite the parties to resolve their dispute through an independent external review process, as specified. The bill would require the department, by September 1, 2002, to accredit at least 3 independent external review organizations in this regard.~~ The bill would provide that a waiver of these provisions is contrary to public policy and is therefore unenforceable and void. ~~The bill would also declare that certain of its provisions are declaratory of existing law.~~ The bill would enact other related provisions.

Because a willful violation of these provisions by health care service plans would be a crime, this bill would thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1.—Section 1394 of the Health and Safety Code is~~
- 2    ~~amended to read:~~
- 3    ~~1394.—(a) The civil, criminal, and administrative remedies~~
- 4    ~~available to the director pursuant to this article are not exclusive;~~
- 5    ~~and may be sought and employed in any combination deemed~~
- 6    ~~advisable by the director to enforce the provisions of this chapter.~~
- 7    ~~(b) (1)~~

1     SECTION 1.   Section 1394.4 is added to the Health and Safety  
2     Code, to read:

3     1394.4.   (a) Any interested person may obtain equitable relief  
4     from any licensee as to any violation or threatened violation of this  
5     chapter in any court of competent jurisdiction. This remedy is not  
6     exclusive, but is cumulative to other remedies or penalties  
7     available under all other laws of this state and under federal law.

8     ~~(2) Within five days after the deadline set for the respondent or~~  
9     ~~defendant to file its answer to an action brought pursuant to this~~  
10    ~~subdivision, the court may invite the parties to consider resolving~~  
11    ~~their dispute through an independent external review process. In~~  
12    ~~order to utilize that process, the following shall apply:~~

13    ~~(A) Both parties agree to submit their dispute to the~~  
14    ~~independent external review process.~~

15    ~~(B) The department shall not review the decision of the~~  
16    ~~independent external review organization.~~

17    ~~(C) The costs of the independent external review shall be borne~~  
18    ~~equally by the parties. However, if the independent external~~  
19    ~~review organization apportions fault between the parties, the costs~~  
20    ~~shall be apportioned between the parties based on the percentage~~  
21    ~~outlined by the organization.~~

22    ~~(D) The recommendation of the independent external review~~  
23    ~~organization shall be in writing and shall describe the reasons for~~  
24    ~~the recommendation.~~

25    ~~(E) The independent external review organization shall~~  
26    ~~complete its review and submit its written decision to the parties~~  
27    ~~no later than 30 days from the time the dispute is submitted to it~~  
28    ~~for independent external review, unless a later specified time is~~  
29    ~~agreed to by the parties.~~

30    ~~(3) The department, shall, by September 1, 2002, accredit at~~  
31    ~~least three independent external review organizations. The~~  
32    ~~department may, at its discretion grant and revoke accreditation,~~  
33    ~~and shall develop, apply and enforce accreditation standards that~~  
34    ~~ensure the independence of each organization and the~~  
35    ~~qualifications and independence of its reviewers. In order to~~  
36    ~~receive accreditation for the purposes of this subdivision, an~~  
37    ~~organization shall meet all of the following requirements:~~

38    ~~(A) The organization shall be an organization that has as its~~  
39    ~~primary function the provision of mediation and arbitration~~

1 services and that receives a majority of its revenues from these  
2 services.

3 (B) The organization shall submit to the department the  
4 following information upon initial application for accreditation  
5 and annually thereafter upon any change to any of the following  
6 information:

7 (i) The names of all stockholders and owners of more than 5  
8 percent of any stock or options of the organization, if a publicly  
9 held organization.

10 (ii) The names of all holders of bonds or notes of the  
11 organization in excess of one hundred thousand dollars  
12 (\$100,000), if any.

13 (iii) The names of all corporations and organizations that the  
14 organization controls or is affiliated with, and the nature and extent  
15 of any ownership or control, including the affiliated organization's  
16 type of business.

17 (iv) The names and biographical sketches of all directors,  
18 officers, executives, and reviewers of the organization, as well as  
19 a statement regarding any relationships its directors, officers,  
20 executives, and mediators may have with any health care service  
21 plan, disability insurer, managed care organization, provider  
22 group, or board or committee.

23 (v) A description of the system the organization uses to identify  
24 and recruit reviewers, the number of reviewers credentialed and  
25 the types of cases the reviewers are credentialed to handle.

26 (vi) A description of the areas of expertise available from  
27 reviewers retained by the organization.

28 (vii) A description of how the organization ensures compliance  
29 with the conflict-of-interest provisions of this subdivision.

30 (4) If the court invites the parties to consider an independent  
31 external review process, the parties shall notify the court within 30  
32 days if they have selected a mutually acceptable independent  
33 external review organization and appropriate reviewers. If the  
34 parties have not made their selection within 30 days, the action  
35 shall proceed. The court shall not draw any implication, favorable  
36 or otherwise, from the refusal by a party to accept the invitation by  
37 the court to consider utilizing an independent external review  
38 process.

1 ~~(5) Nothing in this subdivision shall preclude the parties, by~~  
2 ~~mutual consent, from using the independent external review~~  
3 ~~process at any other time.~~

4 ~~(6) (A) Notwithstanding any provision of law to the contrary,~~  
5 ~~all time limits with respect to an action shall be tolled while the~~  
6 ~~matter is pending in the independent external review process.~~

7 ~~(B) Ninety days after the commencement of the review and~~  
8 ~~every 90 days thereafter, the action shall be reactivated unless the~~  
9 ~~parties to the action do either of the following:~~

10 ~~(i) Arrive at a settlement and implement it in accordance with~~  
11 ~~the provisions of current law.~~

12 ~~(ii) Agree by written stipulation to extend the independent~~  
13 ~~external review process for another 90-day period.~~

14 ~~(C) Section 703.5 and Chapter 2 (commencing with Section~~  
15 ~~1115) of Division 9 of the Evidence Code apply to any review~~  
16 ~~conducted pursuant to the subdivision.~~

17 ~~(7)~~

18 *(b) If the contract between a licensee and provider expires*  
19 *during the pendency of an action brought pursuant to this*  
20 *subdivision section, the court shall issue an order extending the*  
21 *contract for a 180-day period, in order to provide continuing care*  
22 *to enrollees or subscribers. The current contract rates and terms*  
23 *shall stay in effect during the 180-day period, subject to*  
24 *appropriate adjustment by the court to ensure enrollee or*  
25 *subscriber access to health care. This period may be extended by*  
26 *mutual agreement of the parties. This subdivision does not affect*  
27 *the right of a licensee to terminate a contractual relationship with*  
28 *an individual provider consistent with the principles of Potvin v.*  
29 *Metropolitan Life Insurance Co. (2000) 22 Cal.4th 1060,*  
30 *whenever applicable.*

31 ~~(8)~~

32 *(c) It shall not be a defense in an action brought pursuant to this*  
33 *subdivision section that a provision of this chapter that is at issue*  
34 *has been contractually waived. Provisions of contracts of health*  
35 *care service plans licensees or their contracting intermediaries that*  
36 *require beneficiaries or providers to waive any provision of this*  
37 *chapter are prohibited and unenforceable.*

38 ~~(9)~~

1 (d) It shall be unlawful for a licensee to terminate, retaliate  
2 against, or otherwise penalize plan enrollees, *subscribers*, or  
3 providers for exercising their rights under this ~~subdivision~~ section.

4 ~~(10) This subdivision does not apply to disputes that are subject~~

5 (e) *This section does not apply to an enrollee or subscriber's*  
6 *individual grievance or complaint with a licensee that is subject*  
7 *to Section 1368, 1368.01, 1368.02, 1368.03, 1368.04, 1368.1,*  
8 *1370.4, 1374.30, 1374.31, 1374.32, 1374.33, 1374.34, 1374.35,*  
9 *or 1374.36. Nothing in this subdivision shall limit an action to*  
10 *obtain equitable relief from a licensee for any violation or*  
11 *threatened violation of the sections specified in this subdivision if*  
12 *the action does not seek relief for an enrollee's or subscriber's*  
13 *individual grievance or complaint.*

14 ~~(11)~~

15 (f) A ~~health care service plan~~ licensee shall not seek indemnity,  
16 whether contractual or equitable, from a provider, employer, or  
17 employer group purchasing organization for any liability imposed  
18 pursuant to this ~~subdivision~~ section.

19 ~~(12)~~

20 (g) Any waiver of this ~~subdivision~~ section is contrary to public  
21 policy and therefore shall be unenforceable and void.

22 ~~(13) All provisions of this subdivision, other than those set~~  
23 ~~forth in paragraphs (3) to (7), inclusive, confirm, and are~~  
24 ~~declarative of, rather than constituting a change in, existing law.~~

25  
26 (h) *The enactment of this section shall not be construed to*  
27 *suggest that the law in existence prior to enactment of this section*  
28 *prohibits or permits the filing of an action for equitable relief by*  
29 *a private party for a violation of this chapter, and shall not in any*  
30 *way be deemed to affect any litigation to enforce this chapter that*  
31 *is pending on January 1, 2002.*

32 SEC. 2. No reimbursement is required by this act pursuant to  
33 Section 6 of Article XIII B of the California Constitution because  
34 the only costs that may be incurred by a local agency or school  
35 district will be incurred because this act creates a new crime or  
36 infraction, eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section 17556 of  
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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